## UNITED STATES DISTRICT COURT DISTRICT OF NEW HAMPSHIRE

| David s. Young and Joan E. Young as Guardians of the Person and Estate of Jonathan Matthew Young | ) ) ) | Docket No: 1:06-cv-475-PB |
|--|-------|---------------------------|
| V.   | )     |                           |
| Lakeview Neurorehabilitation Center, Inc.  | )     |                           |

## DEFENDANT LAKEVIEW NEUROREHABILITATION CENTER, INC.'S CONSENTED TO MOTION FOR REMAND FOR MEDICAL INJURY SCREENING PANEL WITH INTEGRATED MEMO OF LAW

NOW COMES the Defendant, Lakeview Neurorehabilitation Center, Inc. ("Lakeview") by and through its attorneys, Getman, Stacey, Schulthess & Steere, P.A., and respectfully moves this honorable Court for an order remanding this matter to review by a medical injury screening panel pursuant to the provisions of NH law, and in support thereof states as follows:

- 1. Plaintiff has brought a multi-count complaint asserting, *inter alia* claims for damages arising out of alleged medical injury.
- 2. Effective August 1, 2005, the NH Legislature has mandated that any actions for medical injury be submitted to a screening panel pursuant to the provisions of NH RSA § 519-B:1 *et seq*. The stated intent of this statute is to expedite the resolution of meritorious claims and to spare parties the expense and delay of defending non-meritorious claims.
- 3. Submission to the Medical Injury Screening Panel will facilitate the prompt administration of justice and assist the parties in reaching an expedited resolution of such claims.
- 4. Plaintiff's counsel has been consulted, and his consent to the relief requested however, according to an automatic response to emails sent to Plaintiff's counsel, he is unavailable until mid-

March. However, undersigned counsel has spoken Attorney Steven E. Hengen, Esquire, of Attorney Richard B. Couser's office, who has consented on behalf of Attorney Couser to the relief requested.

## **ARGUMENT**

Lakeview respectfully urges this honorable Court to apply the provisions of recently enacted New Hampshire law which mandate referral of any action for medical negligence to a pre-trial screening panel pursuant to NH RSA § 519-B:1 *et seq*. Lakeview acknowledges that in diversity cases such as this, a federal court will "... apply state substantive law and federal procedural rules." Correia v. Fitzgerald, 354 F.3d 47, 53 (1st Cir.2003); Hanna v. Plumer, 380 U.S. 460, 465, 85 S.Ct. 1136, 14 L.Ed.2d 8 (1965). Adamson v. Wyeth Pharmaceuticals 2005 WL 2323188, \*1 (D.Mass.) (D.Mass., 2005).

The statute was passed by the New Hampshire General Court to ".... affirm the intent of the general court to contain the costs of the medical injury reparations system and to promote availability and affordability of insurance against liability for medical injury. Claims for medical injury should be resolved as early and inexpensively as possible to contain system costs. Claims that are resolved before court determination cost less to resolve than claims that must be resolved by a court. Meritorious claims should be identified as quickly as possible, as should non-meritorious claims." As such Lakeview argues the statue establishes substantive law of the State and should be followed by this court as well.

WHEREFORE, Defendant Lakeview Neurorehabilitation Center, Inc. respectfully moves and prays that this Honorable Court issue an order allowing this Motion to Remand for Medical Injury Screening Panel and for such other and further relief as may be just.

Respectfully submitted,

LAKEVIEW NEUROREHABILITATION CENTER, INC.

By Its Attorneys,

GETMAN, STACEY, SCHULTHESS & STEERE, P.A.

By: /s/Dona Feeney

Dona Feeney, Esquire Three Executive Park Drive, Suite 9 Bedford, NH 03110 (603) 634-4300

Dated: February 9, 2007

## **CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Defendant Lakeview Neurorehabilitation Center, Inc.'s Consented to Motion to Remand for Medical Injury Screening Panel with Memorandum of Law has been forwarded to opposing counsel, Richard B. Couser, Esquire.

By: /s/Dona Feeney

Dona Feeney, Esquire